

PART 4: CHILD AND ADULT CARE FOOD PROGRAM AGREEMENT

A. THE STATE AGENCY AGREES THAT:

To the extent of funds available, it will reimburse the Local Agency in accordance with meals served to participant during the effective period of this agreement. Participant means "children" or "adult participants" as defined below. Children means (a) persons 12 years of age and under, (b) children of migrant workers 15 years of age and under, and (c) persons with mental or physical handicaps, as defined by the State, enrolled in an institution or a child care facility serving a majority of persons 18 years of age and under. Adult participant means a person enrolled in an adult day care center who is functionally impaired or 60 years of age or older.

In order to carry out the purpose of Section 17 of the National School Lunch Act, as amended, and the Regulations governing the Child and Adult Care Food Program issued hereunder (7 CFR Part 226), Child and Adult Nutrition Services (hereinafter referred to as "State Agency") and the Local Agency, whose name and address appear on the combined application, agree as follows:

B. THE LOCAL AGENCY:

Will follow practices that result in the operation of the Child and Adult Care Food Program in accordance with the meal service, record keeping, and other requirements under 7 CFR 226.

Represents and warrants that it will accept final administrative and financial responsibility for total Child and Adult Care Food Program operations at all homes, centers, or proprietary Title XIX and XX centers listed in the combined application.

Understands that engaging in unlawful practices, falsifying information provided to the State Agency, concealing a criminal background, or substantially failing to fulfill the terms of this agreement will result in termination from the CACFP for cause. This will result in the Local Agency name as well as the names of all responsible principals and all responsible individuals being placed on the National Disqualified List. This information is disseminated to State Agencies for use in approving applications for participation. These individuals are ineligible to sponsor any Child Nutrition Program administered by the United States Department of Agriculture (USDA) in any state without special exception by the USDA Food and Nutrition Service in consultation with the South Dakota Department of Education, Child and Adult Nutrition Services Office (7 CFR 226.6).

Understands the right of the State of South Dakota, USDA, and other State and Federal officials to make announced or unannounced reviews of the local agency operations. These reviews will be held during the local agency's normal hours of child care or adult care operations. Anyone making such reviews must show photo identification and identification that they are employees of one of these entities.

Understands that upon request, all accounts and records pertaining to its Child and Adult Care Food Program must be made available to the State of South Dakota, USDA, and other State and Federal officials, and to the Office of Inspector General for audit or review at a reasonable time and place.

Understands that reasonable accommodations must be provided to the State of South Dakota, USDA, and other State and Federal officials for the purpose of reviewing all accounts and records pertaining to its Child and Adult Care Food Program operations.

Understands and agrees that any food program related publications by the local agency may be freely copied by the State Agency or by other local agencies under the Child and Adult Care Food Program.

Certifies as to the number of private for-profit adult care centers and/or child care centers under its auspices that received amounts granted to the State under Title XIX or XX of the Social Security Act, (or had children that were eligible for free or reduced price meals) for at least 25 percent of each center's enrolled participants or 25% of licensed capacity, whichever is less, during the month preceding application to the Program; and shall continue to certify and provide such information in each succeeding month. The local

agency shall not claim reimbursement for meals served in any for-profit center for any month where less than 25 percent of its enrolled participants or 25% of licensed capacity were Title XIX or Title XX beneficiaries (or were eligible for free or reduced price meals). The local agency shall not claim reimbursement for meals served under the CACFP which are also claimed under Title III. If the local agency is a for-profit sponsoring organization, the local agency also certifies that all centers under this Agreement have the same legal identity as the local agency.

CHILD AND ADULT NUTRITION SERVICES AND THE LOCAL AGENCY MUTUALLY AGREE:

To comply with and meet all responsibilities and requirements set forth in 7 CFR Part 226, Child and Adult Care Food Program Regulations.

That the local agency will be reimbursed under the following methods:

- For child care centers, outside-school-hours care centers, or adult day care centers, according to the local agency's actual count of meals served by eligibility category.
- For sponsoring organizations of day care homes, administrative payments are based on the lesser of year to date per home reimbursement, year to date actual costs, administrative budget, or 30% factor of total year to date per home reimbursement plus year to date meal reimbursement for active day care homes.
- For day care homes, full meal payment will be made according to the home's actual meal count. Provider's own children may be claimed only if the family is eligible.

No monies or other benefits may be paid out under this Program unless this Agreement is completed and filed as required by existing Regulations (7 CFR Part 226).

C. NONDISCRIMINATION CLAUSE

THE LOCAL AGENCY:

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by the Regulations of the Department of Agriculture (7 CFR Part 15), Department of Justice (28 CFR Parts 42 & 50), and FNS directives or regulations issued pursuant to that Act, and the Regulations to the effect that, no person in the United States shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the Program applicant received Federal financial assistance from the USDA and **HEREBY GIVES ASSURANCE THAT** it will immediately take any measures necessary to fulfill this agreement.

HEREBY AGREES TO:

- a. Display the nondiscrimination poster developed by FNS;
- b. Have a way of providing information about benefits of the CACFP in an appropriate translation, if needed;
- c. Make available to all participants and upon request from the public, beneficiaries or potential beneficiaries information regarding the CACFP;
- d. The U.S. Department of Agriculture prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all bases will apply to all programs and/or employment activities.) If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W.,

Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov. Individuals who are deaf, hard of hearing, or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer.

As stated above, all protected bases do not apply to all programs, the first six protected bases of race, color, national origin, age, disability and sex are the six protected bases for applicants and recipients of the Child Nutrition Programs.

THIS ASSURANCE IS given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to recipient, or any improvements made with Federal financial assistance extended to the Program applicant by the Department. This includes any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

BY ACCEPTING THIS ASSURANCE, the Program applicant agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws, and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, Food and Nutrition Service, shall have the right to seek judicial enforcement of this assurance.

This assurance is binding on the Program applicant, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from the Department. The person or persons whose signatures appear on Part 1 are authorized to sign this assurance on the behalf of the Program applicant.

D. AUDIT REQUIREMENTS

All public and private nonprofit and for profit organizations that receive federal assistance must comply with audit requirements under OMB Circular A-128 or A-133 which include CACFP standards compliance. The chart below should be useful in determining the audit requirements for the organization.

Organizations are responsible for scheduling the required audit, which must be completed within 12 months after the end of the organization's fiscal year. A copy of the audit must be submitted to Child and Adult Nutrition Services within 30 days after the organization receives the audit, but no later than 13 months after the end of the organization's fiscal year.

*Federal Financial Assistance (FFA)	Public Entities A-128	Private Nonprofit Entities	For Profit Center
Under \$500,000	No audit requirement	No audit requirement	No audit requirement
Over \$500,000	Organization-wide audit	Organization-wide audit or if all federal assistance comes from one program, either an organization-wide audit or program-specific audit	Organization-wide audit or if all federal assistance comes from one program, either an organization-wide audit or program-specific audit
*FFA means all federal funds, including the value of USDA Donated Foods			

E. APPEAL PROCEDURES

1. Actions Which Can Be Appealed.

In accordance with 7 CFR 226.6(k), and as defined in 7 CFR 226.2, an independent center, or sponsoring organization on behalf of a facility under its jurisdiction, may appeal the following adverse actions made by Child and Adult Nutrition Services hereinafter referred to as the State Agency (SA):

- A. Denial of an local agency's application for participation due to
 - (i) the institution's failure to submit a complete application within acceptable time frames; or
 - (ii) the institution's or principals', including all management personnel and board members, lack of capability, viability, or accountability; or
 - (iii) the institution or principals, including all management personnel and board members, having been declared ineligible for another publicly funded program during the prior 7 years; or
 - (iv) the institution or principals, including all management personnel and board members, having been convicted of an activity in the past 7 years that indicating a lack of business integrity; or
 - (v) the institution or its principals, including all management personnel and board members, placement on the National Disqualified List; or
 - (vi) the submission of false documentation on the application, including concealment of a criminal background.
- B. Denial of an application submitted by a sponsoring organization on behalf of a facility;
- C. Notice of proposed termination of the participation of a local agency or facility;
- D. Notice of proposed disqualification of a responsible principal or responsible individual;
- E. Suspension of a local agency's agreement;
- F. Denial of a local agency's application for start-up or expansion funds;
- G. Denial of an advance payment;
- H. Demand for recovery for all or part of an advance payment in excess of the claim for that period;
- I. Denial of all or part of a claim for reimbursement;
- J. Demand for the remittance of an overpayment;
- K. Denial by the SA to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim; and
- L. Any other action of the SA affecting the participation of a local agency in the Program or the local agency's claim for reimbursement.

2. Manner of Filing a Request for an Appeal.

- A. An independent center or sponsoring organization aggrieved by an adverse action of the State Agency, outlined in items (a) through (l) above, may appeal such action by filing a timely request for appeal as outlined in 2C. The request must be mailed to, or filed with, the Secretary of the Department of Education, 800 Governors Drive, Pierre, South Dakota 57501.

- B. The request must be in writing and must state the name and address of the local agency and the name and title of the person who signed the request. The request must be signed by a responsible representative of the local agency. It need not be signed under oath.
- C. The request must be postmarked or received by the Secretary of the Department of Education prior to midnight of the 15th calendar day after receipt of the notice of adverse action. If the 15th day falls on Saturday, Sunday, or federal legal holiday, the request will be considered timely if it is postmarked or received the next day which is not a Saturday, Sunday, or federal legal holiday.
- D. A local agency which has filed an appeal will be afforded the opportunity to examine and copy the information in the SA files upon which the adverse action was based.
- E. A local agency may represent itself during the review process, be represented by legal counsel at its own expense, or be represented by another person.
- F. At the administrative review official's discretion, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.
- G. The State agency limits the administrative review to a review of written submissions concerning the accuracy of the State agency's determination if the application was denied or the State agency proposes to terminate the institution's agreement because:
 - (i) The information submitted on the application was false,
 - (ii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list,
 - (iii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program, or
 - (iv) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity.

3. Content of Request for Appeal.

- A. At a minimum, a request for appeal must clearly identify the adverse action being appealed, the basis of the local agency's appeal, and the relief or remedy sought. It must also include the date of the letter or other such written communication from the SA notifying the organization or local agency of the proposed adverse action, and the name and title of the SA official who signed such letter or communication. The review by the impartial Review Officer may be a review of all documents or an in-person hearing. If an in-person hearing before the Review Officer is desired, that also must be clearly stated. An in-person hearing will not be granted for adverse action listed in 1(a)(ii-v).
- B. An appellant local agency may submit written information in support of its position at the time it files its appeal with the Secretary of the Department of Education. It may also submit additional written information to the designated Review Officer up to 30 calendar days after receipt of the SA notice of adverse action.

4. Procedures for Handling an Appeal.

- A. The SA will receive and log each appeal. If the appeal is timely, the Secretary of Education will assign the review to a designated Review Officer.
- B. The SA will acknowledge all appeals in writing within 10 calendar days of receipt. It will also notify successful appellants which Review Officer has been assigned to review their case and where they may send additional written information. If a hearing has been requested, the Review Officer will contact the

appellant to arrange a suitable date, time, and place for the hearing. The Review Officer will notify the appellant and the SA of the scheduled date, time, and place of hearing by certified mail at least 10 calendar days in advance. Failure of the appellant local agency's representative to appear at a scheduled hearing shall constitute the appellant local agency's waiver of the right to a personal appearance before the Review Officer, unless the review official agrees to reschedule the hearing. A representative of the SA shall be allowed to attend the hearing to respond to the appellant's testimony and answer questions posed by the Review Officer.

5. Determination of the Review Officer.

A. The Review Officer shall make a written determination based upon

- (i) Written information submitted by the SA;
- (ii) Written information submitted by the local agency and responsible principals and responsible individuals in support of its position;
- (iii) Such additional written information as may be obtained by the Review Officer from any other person or persons having relevant and pertinent information;
- (iv) Information presented orally under oath at a hearing; and
- (v) Federal and State laws, regulations, policies, and procedures governing the Program.

B. Within 60 calendar days from receipt of the appeal, the Review Officer will make a determination on the action under appeal in accordance with the regulations governing the Child and Adult Care Food Program. This determination is the SA's final administrative decision on the matter. It is not subject to further appeal or reconsideration. The timeframe is an administrative requirement for the State Agency and may not be used as a basis for overturning the State agency's action if a decision is not made within the specified timeframe.

C. The Review Officer's determination will be sent by certified mail to the appellant local agency or its representative. A copy will also be sent to the SA. It will take effect immediately upon receipt by the appellant local agency or its representative.

D. In the case of a denial of an local agency's or facility's application to participate in the program, the determination of the Review Officer will either sustain the denial or shall direct that the local agency or facility be approved for limited or full participation.

E. In the case of a denial of all or part of a claim for reimbursement, start-up payment, advance payment, or demand for refund of an overpayment, the determination of the Review Officer will either sustain the action under appeal or specify the amount of the claim for reimbursement, start-up payment, advance payment, or overpayment to be returned, including interest assessed.

F. In the case of the termination of a local agency's or facility's participation in the Program, the determination of the Review Officer shall either sustain the termination or shall direct that the local agency or facility be permitted to continue participation in the Program. If the local agency or facility has been terminated for any of the above reasons, the SA shall so specify in its notice of action. Local agencies electing to continue operating while appealing termination shall be reimbursed for any eligible meals served during the period of appeal.

6. Legal Advice.

If an appeal involves any doubtful questions of law, the Review Officer will obtain the advice of the Office of the Attorney General, State of South Dakota.